

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
MOBILE RELAY ASSOCIATES)	File No. 0001398092
)	
Petition For Reconsideration of Grant Filed By)	
National Science And Technology Network, Inc.)	

ORDER

Adopted: January 29, 2007

Released: January 30, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* On February 14, 2005, National Science and Technology Network, Inc. (NSTN) filed a petition for reconsideration of the grant of the above-captioned application filed by Mobile Relay Associates (MRA).¹ For the reasons set forth below, we deny the petition for reconsideration.

2. *Background.* MRA's application for a new trunked Industrial/Business Pool station at Avalon, Santa Catalina Island, California, was granted on January 13, 2005 under Call Sign WQBZ908. NSTN seeks reconsideration of the grant because, in its opinion, the facilities authorized under the application do not satisfy the Commission's rules concerning co-channel and adjacent land mobile radio protection rules and would result in unacceptable interference to NSTN's licensed facilities operating under Call Signs WPME695, WPLR710, WPMP967 and WPM274.² In addition, NSTN asserts that the subject MRA facilities do not satisfy the Commission's protection criteria for adjacent channel TV operations.³ NSTN requests that the license grant to MRA be set aside and MRA's application dismissed.⁴

3. *Discussion.* NSTN contends that MRA's station does not protect its licensed facilities because NSTN is authorized under its licenses to locate any temporary base stations anywhere within thirty miles of its permanent base stations. NSTN appears to contend that temporary-fixed stations are entitled to the same protection as permanent transmitter sites, and it asserts that temporary stations in the 470-512 MHz band are entitled to protection from interference at each potential temporary fixed repeater location as though they were a permanent fixed repeater.⁵

¹ See Petition for Reconsideration filed on February 14, 2005 by NSTN (NSTN Petition).

² See *id.* at 5-6.

³ *Id.* at 6-7

⁴ *Id.* at 1. On February 28, 2005, MRA filed an Opposition to Petition for Reconsideration. See Opposition to Petition for Reconsideration filed on February 28, 2005 by MRA. On March 9, 2005 NSTN filed a Reply to Opposition to Petition for Reconsideration. See Reply to Opposition to Petition for Reconsideration filed on March 9, 2005 by NSTN (NSTN Reply). On October 24, 2006, MRA filed a Supplement to Opposition to Informal Petition for Reconsideration. See Supplement to Opposition to Informal Petition for Reconsideration filed on October 24, 2006. On October 30, 2006, NSTN filed a Reply to the Supplement. See Consolidated Informal Reply of National Science and Technology Network filed November 6, 2005.

⁵ See NSTN Petition at 5; NSTN Reply at 7.

4. We have reviewed MRA's application and conclude that the facilities specified in the application comply with the requirements of Section 90.313 of the Commission's Rules.⁶ The spacing requirements of Section 90.313 are based upon non-temporary, *i.e.*, permanent, licensed facilities. As noted by the frequency coordinator for MRA's application, American Mobile Telecommunications Association, temporary facilities, as a general matter, are not taken into consideration in the frequency coordination process.⁷ We find that requiring the protection requested by NSTN for any potential temporary location within thirty miles of its base station license would result in an inefficient use of spectrum, particularly in the 470-512 MHz band where access is already limited to few frequency bands in a select number of areas of the country. Significantly, we note that NSTN points to no authority for its assertion that the Commission has established requirements setting forth NSTN's desired protection for temporary fixed operations.

5. NSTN also contends that MRA's operations will violate the interference protection requirements of Section 90.307 of the Commission's Rules,⁸ in that mobile units associated with Station WQBZ908 will operate within sixty miles of adjacent TV Channel 15 station KPBS-TV, San Diego, California.⁹ Additionally, NSTN relies on *WAIT Radio v. FCC*¹⁰ to determine that the unusual terrain conditions between Station WQBZ908 and the adjacent channel TV operations require a "hard look" and are precisely the circumstances under which the Commission must invoke the "safety valve" procedures and seek out the "public interest."¹¹

6. NSTN's reliance on *WAIT Radio* is severely misplaced. *WAIT Radio* concerns applications that contain requests for waiver of the Commission's rules and how those requests are to be treated. In this instance there are no waiver requests associated with MRA's application. Additionally, we have reviewed MRA's application and determine that the facilities specified in the application comply with the protection criteria of Section 90.307 of the Commission's Rules.¹² Moreover, we find that the public interest is served by granting the subject application based upon the circumstances presented. We also find that application of the existing rules as NSTN envisions would be inconsistent with the plain language of the rule.

7. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by National Science and Technology Network, Inc., on February 14, 2005 IS DENIED.

⁶ 47 C.F.R. § 90.313.

⁷ See attachment to FCC File No. 0001398092.

⁸ 47 C.F.R. § 90.307.

⁹ See NSTN Petition at 6-7.

¹⁰ 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

¹¹ See NSTN Reply at 8-9.

¹² See 47 C.F.R. § 90.307(d).

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau